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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23..09..2005

C O R A M

The Honourable Mrs. Justice PRABHA SRIDEVAN

Writ Petition No.30 of 2001

Naina Mohammed Jamaath Pallivasal
Ayyapuram, Nadu Street,
Kadayanallur, Tirunelveli District,
rep. by its Mutawalli U. Ilyas,
Nadu Ayyapuram Street,
Kadayanallur,
Tirunelveli District-627 751. .. Petitioner

Versus

1. Tamil Nadu Wakf Board,
   rep. by its Chief Executive
   Officer/Secretary,
   No.3, Santhome High Road,
   Chennai-4.

2. The Superintendent of Wakfs,
   Tirunelveli,
   No.54, High Road,
   Tirunelveli-1.

3. M.U. Mohammed Mohideen
4. S.K. Abdul Majeed
   (R-3 & R-4 impleaded as per
   Order of Court dated 20.7.2001
   made in WPMP. No.2454 of 2001)

5. O.S. Hamsa
6. K.S. Mohammed Yousuf
   (R-5 & R-6 impleaded as per
   Order of Court dated 22.11.2001
   made in WPMP. No.6477 of 2001) .. Respondents

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PRAYER : Writ Petition filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus calling for the records of the first respondent-Wakf Board relating to the order dated

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23.10.2000 in Item No.6/93 passed in its proceedings bearing Rc. No.18719/B1/TNV/92, quash the same as being wholly illegal and further direct the first respondent to hold enquiry as per law - (1) on the petition dated 29.10.1992, which the petitioner herein has filed before the first respondent-Wakf Board to amend the Scheme dated 21.8.1980 (as modified by the order dated 7.10.1992) for the reasons mentioned therein; and (2) on the compromise letter/petition dated 22.2.1993 duly signed by the representatives of the Thangal Katchi, Mela Katchi and Keela Katchi, which has been submitted to the first respondent-Wakf Board when it was under a Special Officer, who is now a member of the first respondent-Wakf Board as an Officer of the State Government.

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For Petitioner : Mr. Habibulla Basha,
Senior Counsel for
Mr. M.A.M. Azeezur Rahman

For Respondents : Mr. A.S. Kaizer (R-1 & R-2)
Mr. A. Abdul Gani (R-3 & R-4)
Mr. S. Silambanan (R-5 & R-6)

O R D E R

The matter relates to the Wakf known as Naina Mohammed Jamaath Pallivasal, Kadayanallur, Tirunelveli District ('Wakf' in short). On 21.8.1980, a Scheme was framed by the Tamil Nadu Wakf Board. As the per the said Scheme, the Executive Committee will consist of twelve members, out of whom six members will be elected from 'Thangal Katchi', four members from 'Mela Katchi' and two members from 'Keela Katchi'. Every member will hold office for a period of one year. Representatives from each party will be elected by muslim males of 21 years of age who are residing in Kadayanallur for not less than six months and are of sound mind. Subsequently, a representative of Thangal Katchi, U. Ilyas, who has filed the present writ petition, filed I.A. Nos.1, 2 and 3 of 1989 for amendments of certain clauses of the Scheme. It is not disputed that only the members of Thangal Katchi are entitled to be the Mutawalli. The amendments sought for were ordered on 7.10.1992 by the Special Officer, who also gave directions to the Superintendent of Wakfs, Tirunelveli to conduct election for the above Wakf. Subsequently, the petitioner filed another I.A. in the year 1992 seeking amendments to the scheme which relate mainly to frequency of the meetings, the right to give the casting vote to the Chairman and the quantum of monthly expenditure. Pending disposal of the said I.A., the petitioner prayed for a stay of the conduct of elections. This I.A. has not been disposed of.

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2. On 22.2.1993, the representatives of the three Katchis gave a letter to the Special Officer indicating their total co-operation with the Special Officer for any amendments. A representative of the Mela Katchi filed Writ Petition No.3094 of 1992 for a mandamus to the Wakf Board to give effect to the Scheme framed on 21.8.1980. When the matter came up for hearing, the counsel for the respondent therein informed the Court that the Scheme had been amended, and compromise petitions had been signed by both the parties and submitted to the Board. Recording this, that writ petition was dismissed by order dated 28.7.1999. On 23.2.2000, by a Special Resolution, the Wakf Board directed the Superintendent of Wakfs, Tirunelvei to hold the election for this Wakf in the presence of Janab Naina Mohammed without any delay. The petitioner filed Writ Petition No.7920 of 2000 for a certiorari to quash the Resolution dated 23.2.2000 and for other reliefs. On 12.7.2000, notice was issued by the Wakf Board for an enquiry regarding the conduct of the election to the said Wakf. The date of the hearing was fixed for 28.7.2000 and all parties including the writ petitioner were requested to appear before the Board with all the relevant records. On 25.7.2000, the counsel for the writ petitioner herein, on instructions from the petitioner, sent a letter to the Board stating their inability to travel from Vellore to be present for the hearing on 28.7.2000. An I.A. was filed on 9.8.2000 for reopening the case, to give the petitioner adequate opportunity and to make representation.

3. On 23.10.2000, the Chairman and the Members of the Wakf Board met and it is seen from a reading of the proceedings that though the other Katchis had elected their representatives, viz. Mela Katchi – four members, Keela Katchi - two members, Thangal Katchi had not chosen to elect their representatives. The Tribunal also refused to grant injunction. After deep consideration, the Board decided to bring the Wakf under its direct management. These proceedings are under attack in the present writ petition.

4. On 20.11.2000, the Chief Executive Officer in charge of the Wakf sent a letter to the Superintendent of Wakfs, Tirunelveli to take over charge of the Wakf as ordered by the Board and report compliance, enclosing xerox copies of the impugned proceedings. The petitioner appears to have filed a suit before the Wakf Tribunal in O.S. No.307 of 2000. The prayer in O.S. No.307 of 2000 is for cancellation of the order dated 20.11.2000 and to implement the compromise entered into between the plaintiff and defendants 1 and 2, and for a permanent injunction restraining "the first respondent from in any manner interfering with the day-to-day administration of the plaint Pallivasal or taking possession of the said Pallivasal and for other reliefs". I.A. No.747 of 2000 was filed for an interim injunction and this was closed by the learned

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Subordinate Judge, Tirunelveli (Wakf Tribunal) by order dated 8.12.2000. It is seen from a copy of this order that when the matter came up for arguments, the members of Thangal Katchi were willing to arrive at an interim arrangement for distribution of 'Nombu Kanji' during the Ramzan month under the supervision of the Superintendent of Wakfs. This statement was recorded and the I.A. was closed.

5. On 10.9.2005, the learned counsel for the writ petitioner in W.P. No.7920 of 2000 made an endorsement that the said writ petition may be dismissed as not pressed and it was accordingly dismissed as having been withdrawn.

6. Mr. Habibulla Basha, learned senior counsel appearing for the writ petitioner would submit that the impugned order is clearly illegal since it is contrary to the provisions of the Wakf Act, 1995 ('Act' in short). It was submitted that Section 65 of the Act provides for assumption of direct management only under certain circumstances and those circumstances do not exist in the present case. It was further submitted that the proviso to Section 67(2) of the Act clearly calls upon the Committee to give notice before taking the proposed action for supersession of the Committee and this has not been done. It was also submitted that Section 65 of the Act clearly states that the assumption of direct management must be by notification in the Official Gazette and though the order had been passed in the year 2000, the Gazette Notification came only on 3.1.2001 and therefore, the order is void. It was further submitted that the order was passed without giving any opportunity. Learned senior counsel further submitted that the fact that the writ petitioner had pursued the alternate remedy also cannot come in the way of this Court granting the relief since it is well settled that the availability of alternate remedy will not be a bar to exercise writ jurisdiction in at least three contingencies – (a) where the writ petitioner seeks enforcement of any fundamental right, (b) where there is failure of principles of natural justice, (c) where the orders or proceedings are wholly without jurisdiction, or (d) where the vires of the Act is challenged. It was further submitted that O.S. No.307 of 2000 has been withdrawn now, though it was pending when the writ petition was filed, so there is nothing to prevent the petitioner from pursing the remedy under Article 226.

7. Learned senior counsel placed reliance on the following decisions :-

1998 (8) S.C.C. 1 [WHIRLPOOL CORPORATION VS. REGISTRAR OF TRADE MARKS, MUMBAI]

2004 (3) S.C.C. 553 [ABL INTERNATIONAL LTD. VS. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD.]

2005 (1) M.L.J. 646 [SALAM KHAN VS. THE TAMIL NADU WAKF BOARD]

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2004 (7) S.C.C. 166 [S.J.S. BUSINESS ENTERPRISES (P) LTD. VS. STATE OF BIHAR]

2003 (1) C.T.C. 189 [HARBANSLAL SAHNIA VS. INDIAN OIL CORPORATION LTD.]

A.I.R. 2000 MADRAS 412 [HAJEE DR. SYED LATHEEFUDDIN SHAH VS. TAMIL NADU WAKF BOARD]

1987 (1) S.C.C. 658 [B.K. SRINIVASAN VS. STATE OF KARNATAKA]

8. Learned counsel appearing for the Tamil Nadu Wakf Board would submit that there is no irregularity in the impugned order; the Scheme was framed on 21.8.1980; the Scheme was modified on 7.10.1992; the modification remains unchallenged till date; the petitioner was given an opportunity which he failed to avail of; the other two Katchis had elected their representatives and if the Wakf suffers without a Mutawalli, the members of Thangal Katchi will have only themselves to blame; it is actually a strain on the Wakf Board to directly supervise or manage any Wakf; the Wakf Board is entirely in favour of the Committees managing and administering the Wakfs themselves.

9. Learned counsel for the Wakf Board placed reliance on the following decisions :-

2005 (1) L.W. 676 = 2005 (1) M.L.J. 646 [SALAM KHAN VS. THE TAMIL NADU WAKF BOARD]

2005 (2) L.W. 615 [MUKRAM SHERIF VS. MOINUDEEN SHERIFF]

10. Learned counsel appearing for the other Katchis also submitted that nothing survives in the writ petition. The impugned order has come into effect and the writ petitioner has filed this writ petition only to prevent the smooth management of the Wakf.

11. It is unfortunate that persons having the right to manage a Wakf should indulge in such disputes or activities which disrupt the smooth running of the Wakf.

12. Section 65 of the Wakf Act, 1995 reads as follows:-

> "65. Assumption of direct management of certain wakfs by the Board.-
>
> (1) Where no suitable person is available for appointment as a mutawalli of a wakf, or where the Board is satisfied, for reasons to be recorded by it in writing, that the filling up of the vacancy in the office of a mutawalli is prejudicial to the interests of the wakf, the Board may, by notification in the Official Gazette, assume direct management of the wakf for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification.

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(2) The State Government may, on its own motion or on the application of any person interested in the wakf, call for the records of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and the orders so made by the State Government shall be final and shall be published in the manner specified in sub-section (1).

(3) As soon as possible after the close of every financial year, the Board shall send to the State Government a detailed report in regard to every wakf under its direct management, giving therein -

(a) the details of the income of the wakf for the year immediately preceding the year under report;

(b) the steps taken to improve the management and income of the wakf;

(c) the period during which the wakf has been under the direct management of the Board and explaining the reasons as to why it has not been possible to entrust the management of the wakf to the mutawalli or any committee of management during the year; and

(d) such other matters as may be prescribed.

(4) The State Government shall examine the report submitted to it under sub-section (3) and after such examination issue such directions or instructions to the Board as it may think fit and the Board shall comply with such directions or instructions on receipt thereof."

Section 67(2) and the proviso to that Section read as follows :-

"67. Supervision and supersession of committee of management.-

.....

(2) Notwithstanding anything contained in this Act and in the deed of the wakf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the wakf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the wakf, insofar as it relates to the constitution of the committee, shall cease to have any force :

Provided that the Board shall, before making any order superseding any committee, issue a notice setting

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forth therein the reasons for the proposed action and calling upon the committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken."

Section 64, which deals with removal of Mutawalli, gives the Mutawalli the right to appeal against such orders before the Tribunal, and the decision of the Tribunal on such appeals shall be final. The Tribunals are constituted by the State Government under Section 83 of the Act and as per Section 83(9), no appeal shall lie against any decision, whether interim or otherwise, given or made by the Tribunal. However, the proviso to Sub-section (9) shows that the High Court may exercise its revisional jurisdiction, call for the records either on its own motion or on application by the Board or any person aggrieved, to satisfy itself as to the correctness, legality or propriety of such determination by the Tribunal of any dispute, question or other matters.

13. It is clear from a reading of Section 67(2) of the Act that it has no application to the present case. The Executive Committee was not superseded by another Committee. Elections were announced and while the other two Katchis appointed their members to the Executive Committee, Thangal Katchi did not do so and therefore, the Board assumed direct management of the Wakf. If any Committee is superseded as above, a new Committee of management shall be constituted simultaneously with the order of supersession. The impugned proceedings do not speak of supersession, but only of direct assumption. So, we will have to test the action of the Board only with reference to Section 65.

14. Section 65 provides for assumption of direct management in two situations – (a) where no suitable person is available for appointment as a Mutawalli; or (b) where the Board is satisfied that the filling up of the vacancy in the office of the Mutawalli is prejudicial to the interest of the Wakf. It is not the case of the respondents that filling up the vacancy in the office of Mutawalli would prejudicially affect the Wakf. So, the second condition does not apply.

15. The next question is whether the assumption of direct management by the Board was because "no suitable person" was available for appointment to the Wakf.

16. In the plaint filed before the Wakf Tribunal, the petitioner has pleaded, "Out of 12 shares, 6 shares from Thangal Party, 4 shares from Shegana Party and 2 shares were from Kunduattai Party, but the Haqdar has to be elected from Thangal Party according to the Proforma Report and from time immemorial". A counter has been filed by the Wakf Board wherein in paragraph 4,

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it is stated that the Haqdar will be elected from one among the muslims of Thangal Party. So, without dispute, it is admitted that the Mutawalli will have to be elected from the members of Thangal Katchi. It is because of the non-cooperative attitude of the persons belonging to Thangal Katchi that no members from Thangal Katchi got elected to the Executive Committee and without them, the Mutawalli cannot be elected since the admitted position is that the Mutawalli has to be elected from the members of Thangal Katchi. There were no elected members from Thangal Katchi and therefore, there was "no suitable person"; so the Board was left with no option but to assume direct management of the Wakf, in the absence of a suitable person, viz. a member belonging to Thangal Katchi.

17. Next, we have to see whether the proceedings are vitiated because the Gazette Notification was made only in January, 2001. The paper publication appears to have been made on 27.11.2000 and the Gazette Notification was made on 3.1.2001. The Act says that the Board may assume direct management by notification in the Official Gazette. The Actions of State and other authorities like the Board herein may be "made known" by notifications published in the Government Gazette. There are many such instances, e.g., the notification issued under Section 4(1) of the Land Acquisition Act puts the owners of the lands sought to be acquired on notice as to the proceedings to be initiated. Therefore, the assumption of direct management of the Wakf by the Board is made known by notification; so it can, at the worst, mean that the assumption would take effect from the date of the notification. The action does not and cannot become void only because the notification came two months later.

18. Now, let us look at the decisions cited. In 2004 (3) S.C.C. 553 [ABL INTERNATIONAL LTD. VS. EXPORT CREDIT GUARANTEE CORPORATION OF INDIA LTD.], it was held as follows:-

> "While considering such argument, this Court held that when an authority has to perform a public function or a public duty, if there is a failure a writ petition under Article 226 of the Constitution is maintainable. In the instant case, as to the fact that the respondent is an instrumentality of a State, there is no dispute but the question is; was the first respondent discharging a public duty or a public function while repudiating the claim of the appellants arising out of a contract? Answer to this question, in our opinion, is found in the judgment of this Court in the case of Kumari Shrilekha Vidyarthi v. State of U.P. [1991 (1) S.C.C. 212], wherein this Court held :
>
> 'The impact of every State action is also on public interest... It is really the nature of its personality as State which is significant and must

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characterize all its actions, in whatever filed, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters.'

It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India."

.....

"From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition :

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks.) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it

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necessary to exercise the said jurisdiction."

19. In 1998 (8) S.C.C. 1 [WHIRLPOOL CORPORATION VS. REGISTRAR OF TRADE MARKS, MUMBAI], the Supreme Court had observed, "The High Court imposes on itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court will not normally exercise the writ jurisdiction". With this is mind, the case on hand can be examined.

20. In 2004 (7) S.C.C. 166 [S.J.S. BUSINESS ENTERPRISES (P) LTD. VS. STATE OF BIHAR], the appellant had filed the writ petition without disclosing that he had already filed a civil suit for the same relief. An interim order was passed in the writ petition. The suit was withdrawn and not pending when the writ petition was heard. The following extract in the said decision is relevant :-

> "In this case, admittedly, the appellant has withdrawn the suit two weeks after the suit had been filed. In other words, the appellant elected to pursue its remedies only under Article 226. The pleadings were also complete before the High Court. No doubt, the interim order which was passed by the High Court was obtained when the suit was pending. But by the time the writ petition was heard the suit had already been withdrawn a year earlier. Although the appellant could not, on the High Court's reasoning, take advantage of the interim order, it was not correct in rejecting the writ petition itself when the suit had admittedly been withdrawn, especially when the matter was ripe for hearing and all the facts necessary for determining the writ petition on merits were before the Court, and when the Court was not of the view that the writ petition was otherwise not maintainable."

In the same case, the Supreme Court also observed that the appropriateness of entertaining the writ petition when the writ petitioner had availed of the alternative remedy is, "one based on public policy and that where in the parallel jurisdiction the order is not a speaking one or the matter has been disposed of on some other ground, instead of dismissing the writ petition on the ground that alternative remedy had been availed of, the court may call upon the party to elect whether it will proceed with the alternative remedy or under the application under Article 226".

21. In the present case, the writ petitioner had disclosed in paragraph 15 of the writ affidavit that the alternative remedy had been availed of. According to the writ petitioner, since the writ petitioner will not get the required relief in the suit, the only remedy available to him is under Article 226. Therefore, there is

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no suppression of facts, but we are not satisfied that the writ petitioner had no other remedy. Section 65 (2) of the Act provides for a revision by the State Government against a Notification under Section 65(1). On application, the State Government will decide the question of correctness, legality and propriety of the notification issued by the Board under Sub-Section (1). This power can be invoked by "any person interested in the Wakf". The petitioner ought to have done that instead of approaching the writ court.

22. As regards the alleged procedural irregularity in publication of the notification, the petitioner relied on 2000 (116) E.L.T. 431 (S.C.) [UNION OF INDIA VS. GANESH DAS BHOJRA]. Here, the Supreme Court held that where the method and mode of publication is described under the statute, that mode must be followed. This decision cannot help the petitioner since in paragraph 19 of the said judgment, the Supreme Court has held that the notification will take effect only if published in the customary named official channel, viz. the Official Gazette. Therefore, even if we assume that the assumption of the management of the Wakf by the Board did not take effect on the date of the proceedings, it came into effect when the notification was published in the year 2001.

23. In A.I.R. 2000 MADRAS 412 [HAJEE DR. SYED LATHEEFUDDIN SHAH VS. TAMIL NADU WAKF BOARD], this Court had quashed the order of removal of a Mutawalli without proper notice to the writ petitioner as being violative of principles of nature justice. This decision does not apply to the present case. In this case, election notices were given and the date of election was also notified. The petitioner did not choose any members from their Katchi and not finding a suitable person, direct management was assumed by the Board. This is not a case where there was a removal of Mutawalli. Further, in this case, though the proceedings speak of 'an enquiry', all that the Board wanted was for the petitioner's Katchi to elect their members, which they did not. So, the Board was forced to take the only option left.

24. 1987 (1) S.C.C. 658 [B.K. SRINIVASAN VS. STATE OF KARNATAKA] also deals with the question of notification, but this decision also does not come to the aid of the petitioner herein, since in paragraph 18 of that judgment, the Supreme Court had held, "We are inclined to agree with the High Court that a defective publication which has otherwise served its purpose is not sufficient to render illegal what is published and that such a defect is cured by Section 76-J."

25. In 2005 (1) M.L.J. 646 = 2005 (1) L.W. 676 [SALAM KHAN VS. THE TAMIL NADU WAKF BOARD], it was held that one cannot

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approach this Court under Article 226 of the Constitution without availing of the adequate alternative remedy available to him. To the same effect is 2005 (2) L.W. 615 [MUKRAM SHERIF VS. MOINUDEEN SHERIFF].

26. So, both on the ground of alternative remedy and even on merits, the petitioner's prayer cannot be granted. The conditions necessary for invoking writ jurisdiction do not arise in this case.

27. Much was made of the fact that the amendment applications had not been disposed of and that unless they are disposed of, the Tribunal cannot call for the elections. The nature of the amendments sought for clearly shows that it is not necessary to hold up the elections on the ground of the amendment applications being pending. Probably, the petitioner's only object is to see that the elections are held delayed indefinitely. The pendency of the amendment applications is totally irrelevant.

28. A question was raised as to whether the Special Officer had the power to issue directions to conduct elections. This order was passed in October, 1992 and has not been assailed till now and in fact, it was subsequent to the said order that the petitioner himself moved the Special Officer for amendment of the scheme; so, it is too late in the day to raise this question.

29. In A.I.R. 1965 S.C. 458 [MUNICIPAL BOARD, PUSHKAR VS. STATE TRANSPORT AUTHORITY, RAJASTHAN], the Municipal Board of Pushkar passed a resolution on May 24, 1948 that a bus stand should be shifted. Pursuant to this, the Regional Transport Authority passed a resolution in the year 1959 shifting the bus stand. On June 18, 1960, the notification was issued. Rule 134 of the Rajasthan Motor Vehicles Act, 1939 reads thus :-

> "A Regional Transport Authority, by notification in the Rajasthan Gazette, or by the erection of traffic signs which are permitted for the purpose under sub-section (1) of S.75 of the Act, or both, may, in respect of the taking up or setting down of passengers or both, by public service vehicles or by any specified class of public service vehicles -
>
> (i) conditionally or unconditionally prohibit the use of any specified place or of any place of a specified nature or class, or
>
> (ii) require that within the limits of any municipality or within such other limits as may be specified in the notification, certain specified stands or halting places only shall be so used."

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The Supreme Court held :-

> "Our conclusion therefore is that the order fixing a new bus stand at Pushkar and discontinuing the old bus stand was in effect made not on December 4, 1959 but on June 28, 1960 when the notification about the fixation of a new bus stand was published."

The Supreme Court observed that, "It is reasonable, therefore, to consider the passing of the resolution as the preliminary stage of the making of the order and the notification by which it was published as the final making of the order." In the present case too, we may reasonably conclude that the impugned proceedings took effect from the date of the notification and are not vitiated.

30. The writ petitioner attacked the impugned proceedings on the ground of violation of principles of natural justice. In 1977 (2) S.C.C. 256 [THE CHAIRMAN, BOARD OF MINING EXAMINATION AND CHIEF INSPECTOR OF MINES VS. RAMJEE], the Supreme Court observes tellingly thus :-

> "The last violation regarded as a lethal objection is that the Board did not enquire of the respondent, independently of the one done by the Regional Inspector. Assuming it to be necessary, here the respondent has, in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been heard and compliance with Regulation 26, in the circumstances, is complete. Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the main proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt – that is the conscience of the matter."

31. The impugned proceedings show clearly the frustration of the Board, as could be seen from the following extract :-

> "The conduct of the Thangal Katchi deserves to be condemned as they have no regard for the directions of the Wakf Board. Presently, Thangal Katchi is holding the management of this Wakf and it appears that in order to keep the management with them, they are playing all sorts of tactics, thus defeating the very object of the scheme

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which was framed earlier for the better administration of this Wakf."

If we keep in mind the words extracted from the Supreme Court's decision referred to above, the petitioner's complaint that opportunity was not given must be rejected. The Board rightly was of the opinion that the interest of the Wakf must be protected and if there was "no suitable person" to be appointed as Mutawalli, the Wakf must be administered by the Board.

32. There is, however, a factual mistake in the proceedings. It is seen from the proceedings that it is recorded that W.P. No.7920 of 2000 was dismissed on 27.4.2000 at the admission stage itself. This is clearly incorrect, because W.P. No.7920 of 2000, as stated earlier, was dismissed only on 10.9.2005.

33. It is held, therefore, that the impugned proceedings is not void. However, under Section 65(1) of the Act, the Board's assumption of direct management of the Wakf cannot exceed "five years in the aggregate". The five years' period will soon come to an end. The interest of the Wakf must be protected, and this Court is in the position of parens patria in respect of all trusts, even though the petitioner, who should zealously ensure that the Wakf's interest is safeguarded, has adopted an attitude which leaves a lot to be desired. So, while disposing of the writ petition, some directions must be given.

34. The writ petition is disposed of, directing Thangal Katchi to elect their members and communicate the same to the first respondent/Wakf Board within a period of eight weeks from the date of this order, after which the Mutawalli shall be appointed to the Wakf without any further delay. Orders shall also be passed on the amendment petitions expeditiously. No costs. Consequently, W.M.P. No.39 of 2001 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ab

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To

1. The Chief Executive Officer/Secretary,
   Tamil Nadu Wakf Board,
   No.3, Santhome High Road,
   Chennai-4.

2. The Superintendent of Wakfs,
   Tirunelveli,
   No.54, High Road,
   Tirunelveli-1.

2 ccs to A. Abdul Ghani, Advocate, SR. 39908
1 cc to S. Silambanan, Advocate, SR. 39972
1 cc to A.S. Kaizer, Advocate, SR. 40007

W.P. No.30 of 2001.

SK (CO)
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